

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

STEVEN MATTHEW BUCHANAN	:	
and KRISTY DEE BUCHANAN,	:	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO.
v.	:	2:09-CV-00183-RWS
	:	
CHIEF JUDGE DAVID E. BARRETT,	:	
<i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER

This case comes before the Court on Plaintiffs' Motion to Appeal *in forma pauperis* [11]. After a review of the record, the Court enters the following Order.

Plaintiffs seek to appeal the Court's decision to dismiss the case as frivolous pursuant to 28 U.S.C. § 1915. (See Order dated October 27, 2009 [8].) Applications to appeal *in forma pauperis* are governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. In pertinent part, § 1915 provides:

(a)(1) [A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that

includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

...

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Similarly, Federal Rule of Appellate Procedure 24 provides:

(1) . . . [A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows . . . the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

...

(3) . . . A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith . . . and states in writing its reasons for the certification or finding. . . .

Thus, two requirements must be satisfied for a party to prosecute an appeal *in forma pauperis*. First, the party must show an inability to pay. Second, the appeal must be brought in good faith.


Here, Plaintiffs have submitted an affidavit demonstrating an inability to pay. However, the Court has previously considered the merits of Plaintiffs' claims and found them to be frivolous under § 1915. (Dkt. No. [8].)

Accordingly, as Plaintiffs do not meet both requisite of the *in forma pauperis* analysis, their request must be denied. Plaintiff's Motion to Appeal in Forma Pauperis [11] is hereby **DENIED** and the Court **CERTIFIES** that any appeal from the Court's Order of October 27, 2009 [8] is not taken in good faith.

Conclusion

For the foregoing reasons, Petitioner's Motion for Leave to Appeal *In Forma Pauperis* [11] is hereby **DENIED**, and the Court hereby **CERTIFIES** that Plaintiff's appeal from its October 27, 2009 Order would be frivolous and not brought in good faith.

SO ORDERED this 19th day of November, 2009.


RICHARD W. STORY
United States District Judge